No. 309 (30)

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1943

WERNER VON CLEMM,

Petitioner,

—*against*—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

HAROLD H. CORBIN,
Counsel for Petitioner.

EDWARD J. BENNETT,
Of Counsel.

Law Brief Press—NYC

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit affirming a conviction in the United States District Court for the Southern District of New York.

Statement of the Matter Involved.

Petitioner is a naturalized citizen who came to this country in 1922 (R. 327, 525). Pioneer Import Corporation is a corporation organized by him in 1938 to import goods to this country (R. 346). Petitioner and Pioneer were indicted April 24, 1942, and convicted on August 18, 1942 under a single count charging conspiracy to violate (a) the so-called "Freezing Order" No. 8405 and the statute

upon which said order was based, Section 95(a) of Title 12, U. S. C. A.; (b) Section 80 of the Criminal Code; (c) Section 1591 of Title 19 (Indictment, R. 5-10).

Section 95(a) of Title 12 authorizes the President to "* * * regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President * * *." Under authority of this statute, the President on May 10, 1940, issued Executive Order 8405 amending a prior order, No. 8389, dated April 10, 1940. As amended, the order prohibited all transactions involving property in which any national of the Netherlands, Belgium and other countries had an interest and all transfers of credit in connection therewith between banking institutions within the United States and between banking institutions within or without the United States. Violation of the order or statute was punishable by $10,000 fine and ten years imprisonment. The statute and order are printed in an appendix herewith.

Section 80 of the Criminal Code makes it a crime punishable by ten years imprisonment and $10,000 fine, to make any false statement, oral or written, in any matter within the jurisdiction of a government agency.

Section 1591 of Title 19, U. S. C. A., is a section of the Tariff Act of 1930, forbidding any false statement upon the entry of merchandise into the United States. Violation is punishable by $5,000 fine and two years imprisonment.

The two latter statutes are not involved in this application, since the question sought to be raised is the constitutionality of Section 95(a) and of the Executive Order issued thereunder.

The government's theory was that diamonds were purchased in Belgium or Holland after May 10, 1940, by

German interests and shipped to the United States from Berlin as German goods and that the conspiracy embraced such plan and contemplated payment therefor in violation of the Executive Order (R. 7-8). The factual issues, though seriously contested, were found against the petitioner (Verdict, R. 735).

Petitioner was sentenced on August 24, 1942 to the maximum fine and imprisonment (two years and $10,000) and has since been serving his sentence (R. 742).

Because of the structure of the indictment, which charged a conspiracy with three different prongs, the indictment was not demurrable unless all three statutes were invalid. The question of constitutionality of Section 95(a) and of the "Freezing Order" were raised at the conclusion of the government's case (R. 321-2) and it was then concluded that the proper method of raising such question was by a request for instructions to the jury at the close of the entire case. At the conclusion of the case, a motion was made (R. 705) to eliminate all evidence relating to this phase of the conspiracy, and denied. A request was then made to instruct the jury as follows (Request No. 7, R. 707):

> "A conspiracy to violate the presidential freezing order would not be a crime because such freezing order is unconstitutional and void and if the jury found that such conspiracy were the only one proven, the defendants must be acquitted."

The Court charged to the contrary (R. 724-5) and granted exception (R. 729).

While the case was substantially tried and submitted to the jury as one involving an alleged conspiracy to violate the Freezing Order, such a request was technically necessary in order to differentiate between conspiracy to violate Section 95(a) and a conspiracy to violate either of the other

two statutes. The government had to prove a conspiracy to violate only one statute. Since violation of three statutes was charged as the object of the conspiracy, conviction could rest on any one. Therefore, if one statute were unconstitutional, the issues should have been restricted to the others, or at least the jury instructed that conviction could not be had on that one. Where a jury is permitted to convict under any one of two or more sections, and any of such sections is unconstitutional, the judgment must be reversed (*Stromberg* v. *California,* 283 U. S. 359; *Williams* v. *North Carolina,* 87 Law. Ed. 189).

The Circuit Court affirmed with an opinion holding Section 95(a) and the Freezing Order constitutional (R. 876). The judgment of affirmance was entered July 30, 1943 (R. 884).

Reasons Relied on for Allowance of the Writ.

The reasons why this writ should be granted are:

1. That the United States Circuit Court of Appeals has decided that Section 95(a) was not an unconstitutional delegation of legislative authority to the President, although it gave the Executive unlimited power to prohibit transactions and prescribed no standard or guide.

2. That the Circuit Court of Appeals has decided that a "retroactive approval" by Congress of an Executive Order, which the President retained complete power to amend, "removed all question of improper delegation", thus approving a reversal of the constitutional process which requires legislation by Congress and approval by the President.

3. That the Circuit Court of Appeals has decided that the power exerted by the Executive in issuing Executive Order 8405 might also be sustained as within the Executive's power to conduct foreign relations.

4. That the decision of the Circuit Court of Appeals is believed to be contrary to the decisions of this Court in *Panama Refining Co.* v. *Ryan,* 293 U. S. 388 and *Schechter* v. *U. S.,* 295 U. S. 495.

5. That the constitutionality of the statute and order involved have not been passed upon by this Court and should be so passed upon because such freezing order, as amended from time to time, has blocked enormous amounts of money and property and made all transactions therein subject to federal license issued only at the discretion of the Executive Department and any transaction in violation of said orders is ostensibly punishable by ten years imprisonment and $10,000 fine.

WHEREFORE the petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court to the Circuit Court of Appeals for the Second Circuit, commanding said Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in this cause, to the end that this cause may be reviewed and determined by this Court, that the judgment of said Circuit Court of Appeals may be reversed, and that the petitioner may have such other and further relief in the premises as may be just.

WERNER VON CLEMM,
Petitioner.

By HAROLD H. CORBIN,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1943

WERNER VON CLEMM,

Petitioner,

—against—

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Opinion of the Court Below.

No opinion was written in the District Court. The opinion of the Circuit Court of Appeals is found at page 876.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered July 30, 1943. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code (U. S. C. A., Title 28, Section 347) and under the Rules of Practice and Procedure in Criminal Cases promulgated by this Court.

Statement of the Case.

A statement of the case has been given in the petition.

Specification of Errors.

The errors relied upon are set out in the Assignment of Errors, to wit: Assignments of Error numbered "12," "13"

and "15" (R. 864-7) all of which raise the question of constitutionality of Section 95A, and the orders issued thereunder.

ARGUMENT

I.

The Presidential freezing order and Section 95(a), in so far as it authorizes such order, are unconstitutional and void.

The primary question is whether Congress has delegated legislative authority, contrary to the provisions of the Constitution Article I, Section 1. "The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested." *Panama Refining Co. v. Ryan*, 293 U. S. 388. In that case the section of N. I. R. A. which authorized the President to prohibit the transportation of petroleum in interstate commerce, where such petroleum was produced in excess of the amounts permitted by state law, was held unconstitutional. This Court said:

> "So far as this section is concerned, it gives to the President an unlimited authority to determine the policy and to lay down the prohibition, or, not to lay it down, as he may see fit. And disobedience to his order is made a crime punishable by fine and imprisonment."

It was held that a general preamble and declaration of policy declaring that an emergency existed and that Congress desired to remove obstructions to the free flow of commerce, to promote the general welfare, and to eliminate unfair competitive practices, did not lay down a limiting standard or guide for executive action. Mr. Justice Cardozo dissented

upon the ground that limiting standards could be found in this general preamble.

In *Schechter* v. *United States,* 295 U. S. 495, it was held that the section of N. I. R. A. which authorized the President to approve or to impose codes of fair competition was unconstitutional. This Court said:

> "It supplies no standards for any trade, industry or activity."

Section 95(a) (see appendix) is not the type of statute which is complete in itself and merely awaits a finding of fact to fix the time at which it becomes effective. It is not complete. It prohibits nothing. It grants authority to the President to regulate or prohibit under his own rules, regulations and licenses. His discretion is absolute. Any payment by or to a bank, by a citizen or non-citizen, may be prohibited. Licenses may be granted or withheld at will. In these circumstances it seems clear that Section 95(a) is an unconstitutional delegation of legislative authority and that no crime is committed by violation of its provisions. The constitutionality of this section, as applied to freezing orders, has not been determined, so far as counsel has been able to discover. In *Perry* v. *United States,* 294 U. S. 330, the entire section was cited to illustrate the lack of a free export gold market, but its constitutionality was not directly involved. In *Campbell* v. *Chase National Bank,* 5 Fed. Supp. 156-172 (S. D. N. Y.) affirmed 71 F. (2d) 669 (C. C. A. 2), cert. den. 293 U. S. 592, the principal question involved was a refusal to turn over gold bullion under requisition of the Secretary of the Treasury authorized by Congress. The District Court, as an incident, held that the part of the statute authorizing the President to require a report of bullion owned was valid.

In *British-American Tobacco Co.* v. *Federal Reserve Bank*, 104 F. (2d) 652, cert. den. 308 U. S. 600, the question likewise was one of the authority to requisition gold bullion. As the Court below states in its opinion in the case at bar, the constitutionality of Section 95(a) was not considered in that case.

In the Court below, we called attention to the fact that in March 1933, when Section 95(a) was amended to give the President this authority over payments of all kinds, there was also enacted Section 95(b) of Title 12 U. S. C. A., which reads as follows:

> "The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority conferred by section 95(a) of this title are hereby approved and confirmed."

Also, on May 7, 1940, the following act was adopted:

> "Executive Order number 8389 of April 10, 1940 and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed." (Section 2 of the Act of May 7, 1940, c. 185, 54 Stat. 179.)

The apparent purpose to ratify and give a legislative status to such orders, rules and regulations is wholly ineffectual. It enacts no specific rule or regulations into law. It leaves such rules and regulations still subject to future amendment, modification or change at the discretion of the Executive. In so far as it relates to past action, it effects a reversal of the constitutional process—instead of Congress enacting a law and the President approving the same, the

President enacts a law and Congress approves the same. In so far as the ratification extends to rules and regulations "hereafter" adopted, the ratification is no different from the original grant of authority. Anticipatory approval of an executive's orders, rules and regulations is merely another way of saying that the power is granted to make such orders, rules and regulations. If the making thereof be a legislative act, it makes no difference whether the statute reads that the power to make orders and rules is granted, or that all orders and rules are approved blindly in advance.

The opinion of the Court below concedes that the statute gave the Executive unlimited discretion. It suggests first, that "there is much persuasive force in the appellee's argument that the power exerted by the Executive with regard to property of foreign nationals in a time of proclaimed emergency falls within the sphere of foreign relations and is thus free from limitations imposed on delegated authority". As to this suggestion, the answer is clear. This question does not concern the conduct of foreign affairs, in which the President is authorized "by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur," and in connection with which he is authorized also to "receive ambassadors and other public ministers" (Const. Art. II, Sec. 2, 3). This question is one of trade and commerce, or, as the government brief below put it, measures "of economic defense". On this subject the Constitution (Art. I, Sec. 8) provides that the Congress shall have the power "to regulate commerce with foreign nationals * * * ". Moreover, the crime referred to in Section 95(a) of which appellant has been convicted, is violation of Section 95(a) or of an order issued thereunder. That statute does not purport to make it a crime to violate unknown rules or orders issued by the President in reliance upon his authority over foreign affairs.

Secondly, the Court below, referring to the above quoted Section 2 of the Act of May 7, 1940, says "we hold that this retroactive approval and confirmation of the President's order removed all question of improper delegation with regard to Order 8389 and provided an adequate standard and guide for his exercise of discretion in Order No. 8405. The latter merely extended to new subject matter, upon facts warranting the extension, a set of regulations already approved by Congress. A clearer example of that guidance required by the *Panama* and *Schechter* cases would be difficult to imagine."

On this score, it should be observed first, that the order and the regulations may be modified or revoked at the discretion of the Executive, so that no mere approval of existing regulations could lay down a standard or guide, or define a limitation for the future. Second, the Constitution provides that Congress shall make the laws subject to the approval of the President, not the reverse.

For the foregoing reasons it is urged that the application for a writ should be granted.

Respectfully submitted,

HAROLD H. CORBIN,
Counsel for Petitioner.

EDWARD J. BENNETT,
Of Counsel.

APPENDIX 1.

Section 95a, Title 12, U. S. C. A.

"Suspension of act as to ally of enemy; transactions in gold, silver, or currency; powers of president in times of national emergency; penalty. During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the president, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the president may require any person to furnish under oath complete information relative to any transaction referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters or other papers in connection therewith in the custody or control of such person either before or after such transaction is completed. Whoever wilfully violates any of the provisions of this section or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this section the term 'person' means an individual, partnership, association, or corporation. (Oct. 6, 1917, c. 106, §5(b), 40 Stat. 415; Sept. 24, 1918, c. 176, §5, 40 Stat. 966; Mar. 9, 1933, c. 1, Tit. I, §2, 48 Stat. 1.)"

APPENDIX 2.

May 10, 1940

EXECUTIVE ORDER No. 8405

AMENDMENT OF EXECUTIVE ORDER NO. 8389 OF APRIL 10, 1940, AMENDING EXECUTIVE ORDER NO. 6560, DATED JANUARY 15, 1934.

Executive Order No. 8389 of April 10, 1940, is amended to read as follows:

"AMENDMENT OF EXECUTIVE ORDER No. 6560, DATED JANUARY 15, 1934, REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND THE EXPORT OF COIN AND CURRENCY.

"By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT OF THE UNITED STATES OF AMERICA, do hereby amend Executive Order No. 6560, dated January 15, 1934, regulating transactions in foreign exchange, transfers of credit, and the export of coin and currency by adding the following sections after section 8 thereof:

" 'SECTION 9. Notwithstanding any of the provisions of sections 1 to 8, inclusive, of this Order, all of the following are prohibited, except as specifically authorized in regulations or licenses issued by the Secretary of the Treasury pursuant to this Order, if involving property in which Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect, or if involving property in which The Netherlands, Bel-

gium or Luxembourg or any national thereof has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect:

"'A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the Unted States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside of the United States, of a banking institution within the United States);

"'B. All payments by or to any banking institution within the United States;

"'C. All transactions in foreign exchange by any person within the United States;

"'D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

"'E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

"'F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

"'SECTION 10. *Additional Reports.*

"'A. Reports under oath shall be filed on such forms, at such time or times and from time to time, and by such persons, as provided in regulations pre-

scribed by the Secretary of the Treasury, with respect to all property of any nature whatsoever of which Norway, Denmark, The Netherlands, Belgium or Luxembourg or any national thereof is or was the owner, or in which Norway, Denmark, The Netherlands, Belgium or Luxembourg or any national thereof has or had any interest of any nature whatsoever, direct or indirect, and with respect to any acquisition, transfer, disposition, or any other dealing in such property.

"'B. The Secretary of the Treasury may require the furnishing under oath of additional and supplemental information, including the production of any books of account, contracts, letters or other papers with respect to the matters concerning which reports are required to be filed under this section.

"'SECTION 11. *Additional Definitions.*

In addition to the definitions contained in section 7, the following definitions are prescribed:

"'A. The terms "Norway" and "Denmark", respectively, mean the State and the Government of Norway and Denmark on April 8, 1940, the terms "The Netherlands", "Belgium", and "Luxembourg", mean the State and the Government of The Netherlands, Belgium and Luxembourg on May 10, 1940, and any political subdivisions, agencies and instrumentalities of any of the foregoing, including territories, dependencies and possessions, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing. The terms "Norway", "Denmark", "The Netherlands",

"Belgium" and "Luxembourg" respectively, shall also include any and all other governments (including political subdivisions, agencies, and instrumentalities thereof and persons acting or purporting to act directly or indirectly for the benefit or on behalf thereof) to the extent and only to the extent that such governments exercise or claim to exercise de jure or de facto sovereignty over the area which, on April 8, 1940, constituted Norway and Denmark and which on May 10, 1940, constituted The Netherlands, Belgium and Luxembourg.

"'B. The term "national" of Norway or Denmark shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of Norway or Denmark at any time on or since April 8, 1940, but shall not include any individual domiciled and residing in the United States on April 8, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on April 8, 1940, had its principal place of business in Norway or Denmark or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens or residents of Norway or Denmark at any time on or since April 8, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

" 'C. The term "national" of The Netherlands, Belgium or Luxembourg shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of The Netherlands, Belgium or Luxembourg at any time on or since May 10, 1940, but shall not include any individual domiciled and residing in the United States on May 10, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on May 10, 1940, had its principal place of business in The Netherlands, Belgium or Luxembourg, or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens or residents of The Netherlands, Belgium or Luxembourg, at any time on or since May 10, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

" 'D. The term "banking institution" as used in section 9 includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution".

" 'SECTION 12. *Additional Regulations.*

" 'The regulations of November 12, 1934, are hereby modified insofar as they are inconsistent with the provisions of sections 9 to 11, inclusive, of this Order, and except as so modified are hereby continued in full force and effect. The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of sections 9 to 11, inclusive, of this Order as amended, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by such agencies as the Secretary of the Treasury may designate.' "

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
May 10, 1940.
7:55 E. S. T. A. M.

Code of Federal Regulations
Title 31—Money and Finance: Treasury
Chapter I—Monetary Offices, Department of the Treasury
Part 130

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
May 10, 1940.

AMENDMENT TO REGULATIONS

The regulations of April 10, 1940, are amended to read as follows:

"REGULATIONS

"Relating to Transactions In Foreign Exchange, Transfers of Credit, Payments, and the Export or Withdrawal of Coin, Bullion and Currency, and Transfers, Withdrawals and Exportations of, or Dealings In, Evidences of Indebtedness or Ownership; and to Reports of Foreign Property Interests In the United States. (*)

"SECTION 130.1 *Authority for regulations.* These regulations are prescribed and issued under authority of Section 5(b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and Executive Order No. 6560, dated January 15, 1934, as amended. (*)

"SECTION 130.2. *Definitions.*

"(a) The term 'Order' shall refer to Executive Order No. 6560, of January 15, 1934, as amended.

"(b) The term 'regulations' shall refer to these regulations.

"(c) The terms 'property' and 'property interest' or 'property interests' shall include, but not by way of limitation, money, checks, drafts, bullion, bank deposits, savings accounts, any debts, indebtedness or obligations, finan-

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(*) Sections 130.1 to 130.6:—Sec. 5(b), 40 Stat. 415 and 966; Sec. 2, 48 Stat. 1; Public Resolution No. 69, 76th Congress; 12 U. S. C. 95a; Ex. Order 6560, Jan. 15, 1934; Ex. Order 8389, April 10, 1940; Ex. Order 8405, May 10, 1940.

cial securities commonly dealt in by bankers, brokers, and investment houses, notes, debentures, stocks, bonds, coupons, bankers' acceptances, mortgages, pledges, liens or other right in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, vendors' sales agreements, land contracts, real estate and any interest therein, leaseholds, ground rents, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trade-marks, copyrights, insurance policies, safe deposit boxes and their contents, annuities, et cetera.

"(d) Safe deposit boxes shall be deemed to be in the 'custody' not only of all persons having access thereto but also of the lessors of such boxes whether or not such lessors have access to such boxes. The foregoing shall not in any way be regarded as a limitation upon the meaning of the term 'custody'.

"(e) For the meaning of other terms reference should be made to the definitions contained in the Order.(*)

"SECTION 130.3. *Licenses to engage in foreign exchange transactions, etc.* Applications for licenses to engage in foreign exchange transactions, transfers of credit, payments, the export or withdrawal from the United States or the earmarking of gold or silver coin or bullion or currency, or the transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property, involving property in which Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect, or in which The Netherlands, Belgium

or Luxembourg or any national thereof has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect, shall be filed in duplicate with the Federal Reserve bank of the district or the Governor or High Commissioner of the territory or possession of the United States in which the applicant resides or has his principal place of business or principal office or agency, or with the Federal Reserve Bank of New York if the applicant has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or a territory or possession of the United States. Application forms may be obtained from any Federal Reserve bank, mint or assay office, or the Secretary of the Treasury, Washington, D. C. Applications shall be executed under oath before an officer authorized to administer oaths, or if executed outside of the United States, before a diplomatic or consular officer of the United States. The applicant shall furnish such further information as shall be requested of him by the Secretary of the Treasury or the Federal Reserve bank or other agency at which the application is filed. Licenses will be issued by the Secretary of the Treasury, acting directly or through any agencies that he may designate, and by the Federal Reserve banks acting in accordance with such rules, regulations, and instructions as the Secretary of the Treasury may from time to time prescribe, in such cases or classes of cases as the Secretary of the Treasury may determine in rules, regulations, and instructions prescribed by him. The Federal Reserve bank or other agency at which an application is filed will advise the applicant of the granting or denial of the license. Licenses for the export or withdrawal of currency or gold or silver coin or bullion or evidences of indebtedness or evidences of ownership of property, after having been cancelled by the collector of customs or the postmaster through whom the exportation or withdrawal

was made, may be returned by such collector of customs or postmaster to the licensee. Appropriate forms for applications and licenses will be prescribed by the Secretary of the Treasury. Licensees may be required to file reports upon the consummation of the transactions. The decision of the Secretary of the Treasury with respect to the approval or disapproval of an application shall be final.(*)

"SECTION 130.4. *Reports of Property Interests of Norway, Denmark, The Netherlands, Belgium, Luxembourg and nationals thereof.*

"(a) On or before May 15, 1940, reports shall be filed on Form TFR-100, duly executed under oath, containing the information called for in such form, with respect to all property situated in the United States on April 8, 1940, in which Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect. Within thirty days of the publication of these regulations in the Federal Register, reports shall be filed on Form TFR-100, duly executed under oath, containing the information called for in such form, with respect to all property situated in the United States on May 10, 1940, in which The Netherlands, Belgium or Luxembourg or any national thereof has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect. Such reports shall be filed by:

"(1) Every person in the United States directly or indirectly holding, or having title to, or custody, control, or possession of such property including, without any limitation whatsoever of the foregoing, every partnership, association, or corporation organized under the laws of the United States or any state or territory

of the United States, or having its principal place of business in the United States, in the shares of whose stock or in whose debentures, notes, bonds, coupons, or other obligations or securities Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect, or in which The Netherlands, Belgium, or Luxembourg or any national thereof has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect; and

"(2) Every agent or representative in the United States for Norway, Denmark, The Netherlands, Belgium or Luxembourg or any national thereof having any information with respect to any such property.

"Provided, That no report on Form TFR-100 need be filed where the total value of all property interests to be reported is less than $250.

"(b) Reports shall be executed and filed in triplicate with the Federal Reserve bank of the district or the Governor or High Commissioner of the territory or possession of the United States in which the party filing the report resides or has his principal place of business or principal office or agency, or if such party has no legal residence or principal place of business or principal office or agency in a Federal Reserve district or a territory or possession of the United States, then with the Federal Reserve Bank of New York. A report shall be deemed to have been filed when it is received by the proper Federal Reserve bank or other agency or when it is properly addressed and mailed and bears a postmark dated prior to midnight of the date upon which the report is due. The Federal Reserve bank and other agencies shall promptly forward two copies of every report filed with it to the Secretary of the Treasury.

"(c)(1) All spaces in the report must be properly filled in. Reports found not to be in proper form, or lacking in essential details, shall not be deemed to have been filed in compliance with the order.

"(2) Where space in the report form does not permit full answers to questions, the information required may be set forth in supplementary papers incorporated by reference in the report and submitted therewith. Supplementary documents and papers must be referred to in the principal statement in chronological or other appropriate order and be described in such manner that they can be identified.

"(d) A separate report under oath must be filed by each person required to file a report except that persons holding property jointly may file a joint report.

"(e) The Secretary of the Treasury may, in his discretion, grant such extensions of time as he deems advisable for the making of any or all of the reports required by these regulations.

"(f) Report Form TFR-100 may be obtained from any Federal Reserve bank, mint or assay office and the Secretary of the Treasury, Washington, D. C.(*)

"SECTION 130.5. *Penalties.* Section 5(b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, provides in part:

> "'* * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten

years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term 'person' means an individual, partnership, association, or corporation.'(*)

"SECTION 130.6. *Modification or revocation.* These regulations and any forms or instructions issued hereunder may be modified or revoked at any time.(*)"

HENRY MORGENTHAU, JR.
Secretary of the Treasury.

APPROVED: May 10, 1940.
7:55 A. M. E.S.T.
FRANKLIN D. ROOSEVELT.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 309

WERNER VON CLEMM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the circuit court of appeals (R. 877–884) is not yet reported.

JURISDICTION

The judgment of the circuit court of appeals was entered July 30, 1943 (R. 885). The petition for a writ of certiorari was filed August 31, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended

by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether Executive Orders 8389 and 8405, which prohibit, except under appropriate licenses, transactions in foreign exchange involving property belonging to certain European nations or their nationals, are invalid on the ground that Section 5 (b) of the Trading with the Enemy Act of 1917, as amended, authorizing the President to promulgate such orders, is an unconstitutional delegation of legislative power.

STATUTE AND ORDERS INVOLVED

Section 5 (b) of the Trading with the Enemy Act of 1917, as amended, and Executive Order 8389 (April 10, 1940, 5 F. R. 1400), as amended by Executive Order 8405 (May 10, 1940, 5 F. R. 1677), are set forth in the Appendix, *infra*, pp. 9–15. Section 1 of the Act of March 9, 1933 (48 Stat. 1, 12 U. S. C. 95b), and the Joint Resolution of May 7, 1940 (54 Stat. 179), approving Executive Orders, are set forth ~~in the Appendix~~, *infra*, pp. ~~9–15~~ 6–7.

STATEMENT

Petitioner, the Pioneer Import Corporation, and several others as to whom a severance was

had[1] (R. 37–38), were indicted on April 24, 1942, in the District Court for the Southern District of New York in one count charging a conspiracy in violation of Section 37 of the Criminal Code (18 U. S. C. 88). The indictment (R. 5–10) charged that petitioner conspired to import diamonds, in which nationals of the Netherlands, Belgium, and Luxembourg had interests, on or after May 10, 1940, for the purpose of selling them in this country, representing at all times that the diamonds were of German origin and were cut in Germany. In pursuance of this plan it was alleged he conspired to violate (1) 12 U. S. C. 95a and Executive Order 8405 issued pursuant thereto, by paying a New York bank for the diamonds without first obtaining the requisite authority from the Secretary of the Treasury; (2) 18 U. S. C. 80, by falsely representing to the Treasury and Commerce Departments that the diamonds were of German origin and cut; (3) 19 U. S. C. 1591, by the same false representations in his customs declaration and in introducing the diamonds into commerce within the United States. Six overt

[1] Carlos Hoepfner, Carl Von Clemm, Ernest Cremer, Jan Verboven, Edward Vanderlinden, Bozenhart, and Frensel, "the first names of said Bozenhart and Frensel being to the Grand Jurors unknown, and divers other persons to the Grand Jurors unknown, among them being persons constituting the High Command of the German Army, persons constituting the Diamond Control Office of the German Army in Antwerp, Belgium, and agents and employees thereof; and partners and members of International Mortgage Handelgesellschaft * * *."

acts in pursuance of the conspiracy were also alleged.

A jury trial was had, and both petitioner and the Pioneer Import Corporation were found guilty (R. 735). Petitioner was sentenced to imprisonment for two years and to pay a fine of $10,000 (R. 853), and Pioneer Import Corporation was fined $10,000 (R. 854). Upon appeal to the court below, both convictions were affirmed (R. 877–884).

ARGUMENT

Since petitioner does not appear to contest the sufficiency of the evidence (Pet. 3),[2] the sole remaining issue is whether the statute and executive orders involve an unconstitutional delegation of legislative power.

1. In Section 5 (b) of the Trading with the Enemy Act of 1917, as amended (*infra*, pp. 9–10),[3]

[2] The evidence in support of the conviction is summarized in the opinion below (R. 878–881).

[3] In the quarter century that this provision has been in the statute books there appears to have been but one reported attack on it charging that it constituted an improper delegation of lawmaking power, and in that case it was rejected as being without merit. *Campbell* v. *Chase National Bank*, 5 F. Supp. 156 (S. D. N. Y.), affirmed, 71 F. (2d) 669 (C. C. A. 2), certiorari denied, 293 U. S. 592. In decisions by this Court and the lower federal courts, the constitutionality of Section 5 (b) has been assumed. See *Perry* v. *United States*, 294 U. S. 330, 356; *Ubersee Finanz-Korporation Aktien Gesellschaft* v. *Rosen*, 83 F. (2d) 225, 228 (C. C. A. 2), certiorari denied, 298 U. S. 679; *British-Ameri-*

Congress authorized the President, during time of war or any other period of national emergency declared by him, to "investigate, regulate, or prohibit," *inter alia,* any transactions in foreign exchange and transfer of credit between banks or payments by or to banks. Upon the invasion of Denmark and Norway, the President, acting pursuant to this statutory power and "by virtue of all other authority vested in me," took steps to freeze the property in the United States of the invaded countries and their peoples by Executive Order 8389 of April 10, 1940 (5 F. R. 1400). The subsequent German invasion of the Netherlands, Belgium, and Luxembourg brought forth on May 10, 1940, an extension of the protection afforded by the freeze order to protect the property interests of these nations and their nationals (Executive Order 8405, 5 F. R. 1677).

Since it is plain that the freeze order involved an exercise of the war power and the power over international affairs, its validity may be sustained without reference to the ordinary principles of delegation on which petitioner relies (Pet. 8–9); for in such circumstances this Court has recog-

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can Tobacco Co. v. *Federal Reserve Bank*, 104 F. (2d) 652, modified, 105 F. (2d) 935 (C. C. A. 2), certiorari denied, 308 U. S. 600; *Smith* v. *Witherow*, 102 F. (2d) 638, 641 (C. C. A. 3). State courts have assumed the validity of the freeze order and applied it. *Commission for Polish Relief* v. *Banca Nationala A Rumaniei*, 228 N. Y. 332; *Carbone Corporation* v. *First National Bank*, 130 N. J. Eq. 111.

nized that Congress may accord the Executive "a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *United States* v. *Curtiss-Wright Corp.,* 299 U. S. 304, 320. Cf. *United States* v. *Belmont,* 301 U. S. 324, 330; *United States* v. *Pink,* 315 U. S. 203, 229–230. And the concurrence of both legislative and executive action in the present situation removes all doubt as to the constitutional validity of the regulations involved. Cf. *Hamilton* v. *Dillin,* 21 Wall. 73, 87–88; *Prize Cases,* 2 Black 635, 671; *Hirabayashi* v. *United States,* No. 870, 1942 Term, decided June 21, 1943.

2. Furthermore, even tested by the usual standards applicable to the regulation of domestic affairs, the freeze order herein was valid by reason of subsequent ratifying legislation by which Congress, as the court below held, "removed all question of improper delegation with regard to Order 8389 and provided an adequate standard and guide for his [the Executive's] exercise of discretion in Order No. 8405" (R. 883). By an Act (48 Stat. 1, Section 1, 12 U. S. C. 95b) approved March 9, 1933, Congress provided:

> The actions, regulations, rules, licenses, orders and proclamations heretofore or hereafter taken, promulgated, made, or issued by the President of the United States or the Secretary of the Treasury since March 4, 1933, pursuant to the authority

> conferred by subdivision (b) of section 5 of the Act of October 6, 1917, as amended, are hereby approved and confirmed.

And, more specifically, by Joint Resolution approved May 7, 1940 (54 Stat. 179), Congress provided:

> Executive Order Numbered 8389 of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed.

This Court has recognized that Congress may ratify and confirm executive action taken under color of authority, if it could have taken the action in the first instance and if its power to do so remained unimpaired to the date of ratification. *Swayne & Hoyt, Ltd.,* v. *United States,* 300 U. S. 297, 301–302; *Isbrandtsen-Moller Co.* v. *United States,* 300 U. S. 139, 147; *United States* v. *Heinzen and Co.,* 206 U. S. 370, 382; *Rafferty* v. *Smith, Bell & Co.,* 257 U. S. 226; *Hamilton* v. *Dillin,* 21 Wall. 73; *Prize Cases,* 2 Black 635, 671; *Hirabayashi* v. *United States,* No. 870, 1942 Term. Petitioner does not question (see Pet. 11) the power of Congress to impose such restrictions by statute either at the time Executive Order 8389, the basic freeze order, was issued or at the time it ratified that order. In these circumstances there is no room for doubt that the Congressional ratification gave it adequate legal basis.

551450—43——2

It is equally clear that the Joint Resolution of May 7, 1940, established a sufficiently definite standard for Executive Order 8405, issued three days later, which merely extended the protection of Order 8389 to the Netherlands, Belgium, and Luxembourg and their nationals. In approving the policy considerations inherent in the original order with reference to property in this country belonging to invaded nations and their nationals, Congress obviously sanctioned the extension of its protection to subsequently invaded countries. As the court below observed (R. 883), "A clearer example of that guidance required by the *Panama* [293 U. S. 388] and *Schechter* [295 U. S. 495] cases would be difficult to imagine."

CONCLUSION

The petition should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

TOM C. CLARK,
Assistant Attorney General.

ARNOLD RAUM,
OSCAR A. PROVOST,
Special Assistants to the Attorney General.

IRVING S. SHAPIRO,
Attorney.

SEPTEMBER 1943.

APPENDIX

Section 5 (b) of the Trading with the Enemy Act of 1917 as amended (Oct. 6, 1917, c. 106, 40 Stat. 415; September 24, 1918, c. 176, sec. 5, 40 Stat. 966; Mar. 9, 1933, c. 1, Title I, sec. 2, 48 Stat. 1; May 7, 1940, c. 185, sec. 1, 54 Stat. 179, 50 U. S. C. App. 5 (b))[4] provides:

> During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction referred to in this subdivision or

[4] This provision was incorporated into the First War Powers Act of 1941, with substantial revision, none of which is pertinent to this case (Dec. 18, 1941, c. 593, 55 Stat. 839, 50 U. S. C. App. Supp. I, 616).

to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

Executive Order No. 8389 (April 10, 1940), 5 F. R. 1400, as amended by Executive Order No. 8405 (May 10, 1940), 5 F. R. 1677, provides:[5]

Executive Order No. 8389 of April 10, 1940, is amended to read as follows:

"AMENDMENT OF EXECUTIVE ORDER NO. 6560, DATED JANUARY 15, 1934, REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT, AND THE EXPORT OF COIN AND CURRENCY

"By virtue of the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, Franklin D. Roosevelt, President of the

[5] Italics added to designate the language added to Executive Order 8389 by Executive Order 8405.

United States of America, do hereby amend Executive Order No. 6560, dated January 15, 1934, regulating transactions in foreign exchange, transfers of credit, and the export of coin and currency by adding the following sections after section 8 thereof:

" 'SEC. 9. Notwithstanding any of the provisions of sections 1 to 8, inclusive, of this Order, all of the following are prohibited, except as specifically authorized in regulations or licenses issued by the Secretary of the Treasury pursuant to this Order, if involving property in which Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect, *or if involving property in which the Netherlands, Belgium or Luxembourg, or any national thereof, has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect:*

" 'A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside of the United States, of a banking institution within the United States);

" 'B. All payments by or to any banking institution within the United States;

" 'C. All transactions in foreign exchange by any person within the United States;

" 'D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

" 'E. *All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and*

" 'F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

" 'SEC. 10. Additional Reports.

" 'A. Reports under oath shall be filed on such forms, at such time or times and from time to time, and by such persons, as provided in regulations prescribed by the Secretary of the Treasury, with respect to all property of any nature whatsoever of which Norway, Denmark, *the Netherlands, Belgium, or Luxembourg,* or any national thereof is or was the owner, or in which Norway, Denmark, *the Netherlands, Belgium, or Luxembourg* or any national thereof has or had any interest of any nature whatsoever, direct or indirect, and with respect to any acquisition, transfer, disposition, or any other dealing in such property.

" 'B. The Secretary of the Treasury may require the furnishing under oath of additional and supplemental information, including the production of any books of account, contracts, letters, or other papers with respect to the matters concerning which reports are required to be filed under this section.

" 'SEC. 11. Additional Definitions. In addition to the definitions contained in section 7, the following definitions are prescribed:

" 'A. The terms "Norway" and "Denmark," respectively, mean the State and the Government of Norway and Denmark

on April 8, 1940, *the terms "the Netherlands," "Belgium," and "Luxembourg," mean the State and the Government of the Netherlands, Belgium and Luxembourg on May 10, 1940,* and any political subdivisions, agencies and instrumentalities of any of the foregoing, including territories, dependencies and possessions, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing. The terms "Norway," "Denmark," *"the Netherlands," "Belgium" and "Luxembourg"* respectively, shall also include any and all other governments (including political subdivisions, agencies, and instrumentalities thereof and persons acting or purporting to act directly or indirectly for the benefit or on behalf thereof) to the extent and only to the extent that such governments exercise or claim to exercise de jure or de facto sovereignty over the area which, on April 8, 1940, constituted Norway and Denmark *and which on May 10, 1940, constituted the Netherlands, Belgium, and Luxembourg.*

"'B. The term "national" of Norway or Denmark shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of Norway or Denmark at any time on or since April 8, 1940, but shall not include any individual domiciled and residing in the United States on April 8, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on April 8, 1940, had its principal place of business in Norway or Denmark or which on or after such date has been controlled

by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens or residents of Norway or Denmark at any time on or since April 8, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

" 'C. *The term "national" of the Netherlands, Belgium or Luxembourg shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of the Netherlands, Belgium or Luxembourg at any time on or since May 10, 1940, but shall not include any individual domiciled and residing in the United States on May 10, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on May 10, 1940, had its principal place of business in the Netherlands, Belgium or Luxembourg, or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens or residents of the Netherlands, Belgium or Luxembourg, at any time on or since May 10, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.*

"'D. The term "banking institution" as used in section 9 includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

"'SEC. 12. Additional Regulations. The Regulations of November 12, 1934, are hereby modified insofar as they are inconsistent with the provisions of sections 9 to 11, inclusive, of this Order, and except as so modified are hereby continued in full force and effect. The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of sections 9 to 11, inclusive, of this Order as amended, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by such agencies as the Secretary of the Treasury may designate.'"

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
May 10, 1940, 7: 55 A. M., E. S. T.

U. S. GOVERNMENT PRINTING OFFICE: 1943